

REMARKS

As of the filing of the present reply, claims 1-73 were pending in the above-identified US Patent Application.

In the Office Action, the Examiner revised the previous restriction requirement set forth in an Office Action dated October 8, 2008, stating that the election under 35 USC §121 is between claims 1-25, 58, 59, 62 and 63 (Invention I), claims 26-37, 60, 64 and 66-69 (Invention II), and claims 38-57, 61, 65, and 70-73 (Invention III). In response, Applicants reaffirm their election without traverse to prosecute claims 1-25, 58, 59, 62 and 63 of Invention I on the merits.

Also in the Office Action, the Examiner stated that the application contains claims directed to the following patentably distinct species of Invention I: Species A drawn to the embodiment of claim 3 utilizing a flexible substrate, and Species B drawn to the embodiment of claim 4 utilizing a rigid substrate. The Examiner required that Applicants elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. The Examiner did not indicate whether any of the claims are generic.

Election

Applicants hereby elect Species B for prosecution on the merits if no generic claim is held to be allowable.

Generic Claim

Under MPEP §806.04(d), a generic claim is defined to

include no material element additional to those recited in the species, and must comprehend within its confines the organization covered in each of the species.

This definition is then applied to permit “claims to more than one species in the same case” on the conditions that:

the generic claim cannot include limitations not present in each of the added species claims. Otherwise stated, the claims to the species which can be included in a case in addition to a single species must contain all the limitations of the generic claim.

Independent claim 1 of Invention I does not limit the flexibility or rigidity of the substrate on which the sensor is disposed (nor do any of the other claims of Invention I). Applicants believe that claim 1 is generic under the definition of MPEP §806.04(d) because it “include[s] no material element additional to those recited in the species, and . . . comprehend[s] within its confines the

organization covered in each of the species.” Therefore, Applicants believe that the election of Species B includes independent claim 1 as a generic claim, as well as the remaining claims of Invention I, and that all claims depending from claim 1 should be prosecuted on the merits if generic claim 1 is held to be allowable.

Request for Withdrawal of Requirement

In making the election, Applicants respectfully request reconsideration of the election requirement. Applicants respectfully believe that the election requirement is improper because “the claims are but different definitions of the same disclosed subject matter, varying in breadth or scope of definition.” MPEP §806.03. Furthermore, any search conducted on the claimed invention that is limited to a substrate that is either rigid or flexible would not be a thorough search, since it is well known and ubiquitous in the art to form substrates of rigid (e.g., silicon) and flexible (e.g., flex circuits) materials in the fabrication of semiconductor devices.

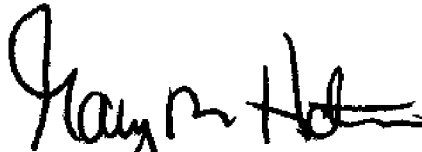
Closing

Should the Examiner have any questions with respect to any matter

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In Response to Office Action dated January 21, 2009

now of record, Applicants' representative may be reached at (219) 462-4999.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gary M. Hartman", with a stylized flourish at the end.

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